

Only persons who have actually paid taxes to the Department can file claims for credit. See 86 Ill. Adm. Code 130.1501. (This is a GIL).

February 23, 2000

Dear Xxxxx:

This letter is in response to your letter dated December 30, 1999 to Glen Bower, Director of Revenue. Your letter has been forwarded to the Legal Services Office for a response. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

1. REQUEST FOR REFUND:

COMPANY hereby files a refund claim pursuant to Ill. Comp. Stat. Ch. 35 Sec. 630/10, and General Information Letter, Ill. Dep't of Revenue, January 16, 1996. Taxpayer respectfully requests a refund of sales and use tax and interest involving bad debts.

2. AMOUNT OF REFUND AND PERIOD:

Amount of Refund Requested for the period January 1, 1994 through February 28, 1997: \$\$\$.

3. NAME AND ADDRESS OF TAXPAYER:

NAME/ADDRESS

4. BASIS FOR THE CLAIM:

A. Statement of Facts

COMPANY was incorporated in the State of STATE, and has its administrative office located at ADDRESS. All outstanding common stock of COMPANY is owned by BUSINESS, the common stock of which is in turn wholly owned by CORPORATION.

COMPANY provides financing services for private-label credit card programs involving retailers in many industries. COMPANY purchases consumer revolving charge accounts from retailers on both a recourse and nonrecourse basis.

The transactions, which give rise to the bad debt sales tax refund in this claim begin with the sale of tangible personal property or taxable services by a retailer to a purchaser on a credit basis. Immediately following this sale the retailer pays the sales tax on the entire amount of the sale to the Illinois Department of Revenue. The retailer subsequently assigns the account to COMPANY. The purchase price COMPANY pays for the account includes the amount of sales tax paid by the retailer to the Department of Revenue, which is then collected by COMPANY from the consumer.

The retailer assigns the account to COMPANY on a recourse and/or nonrecourse basis. This claim is only focusing on the accounts purchased by COMPANY from the retailer on a nonrecourse basis. COMPANY, therefore, has all of the rights, title and interest of the retailer in the account. When a consumer defaults, COMPANY will not be able in most instances to recover the outstanding balance. At that time, the unrecovered portion of the debt becomes a worthless debt for federal income tax purposes.

COMPANY, as the assignee of different retailers, is presently seeking to recover the amount of sales tax paid on the portion of the assigned account that have become worthless debts.

In addition to these transactions, COMPANY purchases installment contracts from auto dealerships. The taxpayer incurs bad debts on these agreements similar to the private-label credit card program.

B. Discussion and Legal Analysis

It has been Department administrative policy to allow a retailer filing a return for gross sales to take a bad debt deduction. The Department has expressed this policy through numerous private letter rulings. See, Private Letter Ruling No. 96-0020, Illinois Dep't of Revenue, January 16, 1996; See *also*, Private Letter Ruling No. 94-0250, Illinois Dep't of Revenue, July 1, 1994; Private Letter Ruling No. 92-0368, Illinois Dep't of Revenue, July 16, 1992. The Department reaffirmed this position in a July 1, 1994 General Information Letter.

The General Information Letter provided that:

[A] retailer filing on the gross sales basis may take a bad debt deduction as an authorized deduction on the ST-1 return for the month in which that bad debt was written off for federal income tax purposes. General Information Letter, Ill. Dep't of Revenue, January 16, 1996.

COMPANY is a retailer registered with the Department for purposes of the retailer's occupation tax. Based on the discussion above, COMPANY is entitled to a refund of sales and use tax.

5. REQUEST FOR A CONFERENCE:

COMPANY respectfully requests a conference to review its refund claim with the Department.

6. ADDITIONAL INFORMATION:

COMPANY respectfully reserves the right to produce additional material, further explain its position, and to advance additional arguments.

Please be advised that this claim is based on actual write-offs of uncollectible accounts, net of any recoveries. Documentation to support this claim may be supplied upon request.

We have referred your request for refund to our Sales Tax Processing Division for their action. Although the Sales Tax Processing Division will make the decision on your request for refund, we will recommend that it be denied. It should be denied because Section 6 of the Retailers' Occupation Tax Act (35 ILCS 120/6) provides that the only person who is entitled to receive credit is the remitter of the tax to the Department, and COMPANY is not the party who paid the tax to the Department. Please refer to Snyderman v. Isaacs 31 Ill.2d 192, 1964.

You have requested a refund on accounts receivable that you have purchased. You contend that as assignee you have the same rights and interest of the original retailer. As explained in the following general information, that is not the case under Illinois sales tax law.

The question of whether transferred "paper" can carry with it the right to file for a credit or refund must be analyzed in the context that only persons who have actually paid taxes to the Department on their own returns are entitled to file such a claim for credit or refund. In the case of installment sales, 86 Ill. Adm. Code 130.1960(c) provides that upon sales of the installment contracts or "paper" to a third party, Retailers' Occupation Tax becomes due based on the entire selling price to the purchasers of the tangible personal property, with credit allowed for any tax already remitted to the Department based on the receipts from the sale of the tangible personal property. The regulation also states that any difference between the selling price of the tangible personal property and the selling price of the installment contract or "paper" is a cost of doing business and therefore not deductible in computing Retailers' Occupation Tax liability. What all this means is that when retailers of tangible personal property sell installment contracts/paper/accounts receivables, the Retailers' Occupation Tax liability is payable at that time to the Department based on the retailers' entire selling price of the goods, rather than receipts received from sale of the paper. The duty to pay the Retailers' Occupation Tax is not passed on to the purchasers of the paper, it remains with the retailers who sold the tangible personal property at retail. This is the legal consequence of the fact that the Retailers' Occupation Tax is an occupation tax imposed upon retailers for the privilege of engaging in the occupation of retailing.

When retailers sell Section 130.1960(c) type "paper" to third parties, the Retailers' Occupation Tax liability is due on the part of the retailers at that point in time. Under the Retailers' Occupation Tax Act and the regulation, the Retailers' Occupation Tax liability, and the corresponding right to file for a credit or refund when an overpayment has been made based upon a mistake of fact or error of law, is restricted to the original retailers, and is not transferred to purchasers of "paper."

While the above discussion explains why we believe your claim for refund should be denied, we also note that except for January and February 1997, all periods in your claim timeframe appear to be closed because of the statute of limitations. Please refer to 35 ILCS 120/6. We further note that you did not provide the claim forms/amended returns (ST-1-X) a taxpayer is required to submit when applying for a claim for credit or refund.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.